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Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Wireline Infrastructure, WC Docket No. 17-84

On February 28, 2018, Steve Morris and Jennifer McKee of NCTA – The Internet & Television Association, Paul Glist and Dan Reing of Davis Wright Tremaine, David Don and Brian Josef of Comcast, Elizabeth Andrion of Charter Communications, and Barry Ohlson of Cox Enterprises, on behalf of Cox Communications (collectively NCTA), met with Jay Schwarz, Wireline Advisor to Chairman Pai to discuss the above-referenced proceeding.¹ On the same day, NCTA also met with Lisa Hone, Daniel Kahn, Adam Copeland, Michael Ray, Gail Krutov, and Deborah Salons of the Wireline Competition Bureau to discuss the same, and Christianna Barnhart of Charter Communications attended this meeting instead of Elizabeth Andrion.

The ASAP Proposal. During these meetings, NCTA presented the Accelerated and Safe Access to Poles (ASAP) Proposal. The ASAP Proposal is a comprehensive, balanced proposal to accelerate new broadband deployment while protecting the safety and reliability of existing network facilities. As compared to other pole access proposals in the record, the ASAP Proposal would enable faster deployment of broadband facilities for new attachers while also providing greater protections to existing networks. The attached materials were distributed in both meetings.

NCTA explained that its members operate state-of-the-art networks that serve tens of millions of customers, while at the same time these companies are spending billions of dollars on new and upgraded deployment to improve the reach and performance of their networks. Accordingly, as both a leading user of existing pole attachments and a leading deployer of new facilities, the cable industry is ideally situated to develop a framework that meets the Commission's objective to "balance[] the legitimate needs and interests of new attachers, existing

¹ *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84, Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment, 32 FCC Rcd 3266 (2017) (*Notice*).

attachers, utilities, and the public” and “facilitate[]new attachments without creating undue risk of harm.”²

In both meetings, NCTA elaborated on four key elements of the ASAP Proposal:

1. Speed and Certainty. The ASAP Proposal would provide greater certainty and speed by providing clearly defined terms, timelines, and procedures in connection with the application and survey process that precedes any make-ready work. Specifically, the proposed rules would:

- define “complete” applications to streamline the application process;
- require posting of rents and fees by all utilities;
- prohibit utility practices that needlessly “stop the clock” or impose requirements unrelated to a make-ready request;
- require joint pole owners to process pole attachment applications and perform pre-construction surveys concurrently; and
- establish deadlines for the performance of surveys and delivery of cost estimates that will facilitate the prompt performance of make-ready work.

2. Expedited Make-Ready. The ASAP Proposal would in all cases provide existing attachers an expedited opportunity to perform their own make-ready work – 30 days after approval by the pole owner for simple projects and 45 days after approval for complex projects. These time periods afford existing attachers an opportunity to maintain control over their networks and resolve issues in the field at the earliest stages of make-ready, thereby minimizing disputes, damages, disruption, and delay and speeding deployment. These timelines would run concurrently, not sequentially, in situations where there are multiple existing attachers, thereby addressing the most frequent complaint from new attachers. In addition, the proposal includes provisions that could result in even shorter time frames if an existing attacher does not intend to perform its own make-ready work.

3. Pre-selected Contractors. If existing attachers do not perform their own make-ready work within the 30/45 day period, a new attacher may perform the work using a qualified contractor pre-selected by the existing attacher. As compared to other proposals in the record, the ASAP Proposal gives existing attachers a greater say in who touches their facilities. We explained that such an approach is beneficial to broadband deployment because it should eliminate many of the problems that cable operators have experienced with “one touch make ready” regimes where there is a complete lack of privity between the existing attacher and the contractor.³ Because the ASAP Proposal obligates existing attachers to identify approved contractors, it obviates the need identified in other proposals to create a nationwide contractor certification process and avoids the administrative burdens, disputes and delays that accompany such a process.

² *Id.* at ¶ 6.

³ Charter Comments at 39-43, 51.

4. Indemnification. The ASAP Proposal would require a new attacher to indemnify existing attachers. Indemnification is necessary to carry out the statutory requirement in Section 224(i) that an existing attacher “shall not be required to bear any of the costs of rearranging or replacing its attachment” resulting from an additional attachment by another entity.⁴ We noted the record evidence of damages and disruption that result from third parties performing work on an existing attacher’s network,⁵ and the need for meaningful indemnification to provide the appropriate incentives for new attachers and their contractors to perform high-quality work and to meet their responsibility to bear the cost of any damages. We explained that the Commission has endorsed similar indemnification requirements in the context of pole attachments and in other contexts where providing access to third parties creates the potential for exposure.⁶

* * *

NCTA emphasized that the accelerated and safe deployment made possible under the ASAP Proposal depends on all affected industry segments compromising on well-established positions. The proposal requires pole owners to process applications much more quickly than they have advocated; it limits existing attachers, including NCTA’s members, to a much narrower opportunity to perform their own make-ready work than exists today; and it requires new attachers, which also include NCTA members, to use only contractors approved by existing attachers when moving facilities on the pole, rather than any contractor they choose. Because the ASAP Proposal is predicated on this balancing of interests, the Commission can, and should, adopt it in its entirety and not in piece parts.

Respectfully submitted,

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⁴ 47 U.S.C. § 224(i).

⁵ NCTA Reply Comments at 16-17; Charter Comments at 39-43; Comcast NPRM Comments at 21-22.

⁶ See *Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5266-5269, ¶¶ 52-58; *In the Matter of Leased Commercial Access*, 23 FCC Rcd. 2909, 2923 ¶ 27 (2008).

NCTA Accelerated and Safe Access to Poles (ASAP) Proposal

1.1403 Duty to provide access; modifications; notice of removal, increase or modifications; petition for temporary stay; and cable system operator notice.

(b) Requests for access to a utility's poles, ducts, conduits or right-of-way by a telecommunications carrier or cable system operator must be in writing *and may be submitted electronically*.

(1) Utilities must utilize a pole attachment application that requires applicants to submit only the information reasonably necessary to commence the application process and does not impose unreasonable or unnecessary additional requirements. Any survey or estimates undertaken by the utility shall be conducted according to the provisions in § 1.1420 and § 1.1422.

(2) Utilities must inform an applicant about whether its application is complete within five days of submission. If an application is deemed incomplete, the utility must specifically identify the missing information. Any resubmitted application need only address the utility's enumerated reasons for the application being incomplete and shall be deemed complete within 3 days after its resubmission unless the utility specifies which enumerated reasons were not addressed. The utility shall limit its subsequent review to the additional information submitted to cure any deficiencies and approve or deny the resubmitted application. Utilities must promptly respond to inquiries from the applicant regarding the status of the application and related work.

(3) If the application is denied, the utility must confirm the denial in writing within 15 days of its receipt of the complete application. The utility's denial of access shall be specific, and shall include all relevant evidence and information supporting its denial, and shall explain how such evidence and information relate to a denial of access for reasons of lack of capacity, safety, reliability or engineering standards. If the application is denied, the applicant may cure the deficiencies the utility identified in its denial and resubmit the application.

1.1420 Timeline for access to poles, ducts, conduits, and rights of way.

(c) Survey. A utility shall respond as described in § 1.1403(b) to a cable system operator or telecommunications carrier within *15 days* of receipt of a complete application to attach facilities to its utility poles (*or within the timelines set forth in paragraph (g) of this section*). This response may be a notification that the utility has completed a survey of poles for which access has been requested, *consistent with its obligation to offer the opportunity for joint surveys as set forth below. Whenever possible, a utility shall process applications and perform surveys concurrently.* A complete application is an application *that is consistent with sections 1.1403(b) and 1.1420(j).* A utility shall *permit a cable system operator or telecommunications carrier requesting attachment and any entities with existing attachments on the affected poles to be present for a field inspection conducted as part*

of a survey. A utility shall use commercially reasonable efforts to provide a cable system operator or telecommunications carrier requesting attachment and any entities with existing attachments on the affected poles with advance notice of not less than three days of a field inspection as part of a survey, and three days shall be added to the 15 day response time provided herein (or to the timelines set forth in paragraph (g) of this section) only in the event a field inspection is conducted.

(d) Estimate. *Each utility shall publicly post its individual charges for rents, surveys, make-ready, and post-construction. When an application for access is granted, a utility shall present to a cable system operator or telecommunications carrier an estimate of charges to perform all necessary make-ready work within 7 days of providing the response required by § 1.1420(c), or in the case where a prospective attacher's contractor has performed a survey, within 7 days of receipt by the utility of such survey. At the same time, the utility shall notify all existing attachers of the approved application.*

(1) A utility may withdraw an outstanding estimate of charges to perform make-ready work beginning 7 days after the estimate is presented.

(2) A cable system operator or telecommunications carrier may accept a valid estimate and make payment any time after receipt of an estimate but before the estimate is withdrawn.

(e) ***

(1) ***

(ii) Set a date for completion of the utility's make-ready that is no later than 30 days after notification is sent (or 75 days in the case of larger orders as described in paragraph (g) of this section). Any other make-ready shall be completed in accordance with § 1.14xx(b).

(3) *A utility shall notify new attachers that make-ready work is complete within 3 days of completion of such work.*

(g) For the purposes of compliance with the time periods in this section:

(1) A utility shall apply the timeline described in paragraphs (c) through (e) of this section to all requests for pole attachment up to 300 poles (or 0.5 percent of the utility's poles in a state, whichever is less).

(2) A utility may add 15 days to the survey period described in paragraph (c) of this section to larger pole attachment orders requesting attachment to between 300 poles (or 0.5 percent of the utilities total poles in the state, whichever is less) and 3000 poles (or 5 percent of the utility's total poles in a state, whichever is less).

(3) A utility may add 30 days to the survey period described in paragraph (c) of this section to pole attachment orders larger than 3000 poles (or 5 percent of the utility's total poles in a state, whichever is less).

(4) A utility may add 45 days to the make-ready periods described in paragraph (e) of this section to pole attachment orders larger than 300 poles (or 0.5 percent of the utility's total poles in a state, whichever is less).

(5) A utility may treat multiple requests from a single cable operator or telecommunications carrier as one request when the requests are filed within 30 days of one another.

(j) *Unreasonable Delay Prohibited.* A utility may require only the reasonable make-ready work necessitated by requests for attachment. It may not require audits, analysis, or other work or information that is unnecessary for the approval of a pole attachment or delay or toll such approval or estimate pending receipt of such unnecessary information or work.

(k) *Small Projects.* For applications for attachment to 30 or fewer poles, utilities shall complete the survey, estimate, and make-ready process in 30 days, excluding any days from when the utility presents the attacher with the make-ready cost estimate and the attacher's payment of the make-ready cost estimate. If no make-ready work is necessary, the attacher may install its attachments. If make-ready work is necessary, but the utility has failed to complete such make-ready work within the deadline specified in this section, the attacher may install NESC compliant temporary extension arms to accommodate its facilities until the proposed permanent attachments can be completed.

(l) *Prioritization of Certain Projects.* Utilities shall prioritize attachment requests that the applicant identifies as its priorities.

(m) *Temporary Attachments.* If a utility fails to designate pre-approved contractors pursuant to § 1.1422 and fails to complete make-ready within the deadlines specified in this section, the requesting attacher may utilize NESC-compliant temporary attachment methods, including extension arms, bracketing, boxing, and alternative spacing to accommodate its facilities until the proposed permanent attachments can be completed and may deduct the reasonable costs associated with the temporary attachment from the pole attachment fees owed to the utility.

1.14xx Make-Ready by Existing Attacher

(a) A new attacher and existing attachers with facilities in the communications space, may at any time voluntarily agree to allow a new attacher to engage a pre-approved contractor to immediately perform make-ready activity that has been approved by the utility (i.e., one touch make-ready).

(b) If parties have not voluntarily agreed to one touch make-ready, upon notice from a utility that the make-ready request of a new attacher has been approved, an existing attacher shall have:

(1) 30 days to perform simple make-ready work; or

(2) 45 days to perform complex make-ready work.

(c) If there are multiple existing attachers on a pole, the time periods in (b)(1) shall run concurrently, not sequentially.

(d) If at any time during the period provided in (b)(1) an existing attacher determines that it will not undertake the make-ready work itself, it shall inform the new attacher of this determination and permit the new attacher to commence the process provided for in § 1.1422(c).

(e) Upon completion of make-ready work, an existing attacher will bill the new attacher for all costs of performing such work and for any work required to correct problems caused by work done by or on behalf of the new attacher. The new attacher shall pay such bills within 30 days of issuance. An existing attacher and new attacher may also agree to unit costs, flat fees and other billing arrangements.

(f) For the purposes of this section, complex make-ready is work that requires splicing or that causes or would reasonably be expected to cause a customer outage, as determined by the existing attacher. Simple make-ready work is all other make-ready work.

(g) If the make-ready work required by an existing attacher with facilities in the communications space cannot be performed until after the utility performs make-ready, the existing attacher's time frames for completion of make-ready are tolled until such utility make-ready work is complete and the utility has provided notice to the existing attachers.

(h) For large projects where the new attacher will attach to poles involving an existing attacher at an average rate of at least 100 poles per week, the new attacher must communicate with the utility and existing attachers 90 days in advance of its initial application for such a project in order to develop a more flexible timeline for approval and make-ready, and the existing attacher's time frame for completion of make-ready will be extended no less than the extensions provided for the utility's work under Section 1.1420(g).

1.1422 Contractors for survey and make-ready.

(a) A cable system operator or telecommunications carrier may hire a contractor to conduct pre-construction survey work or, in cases where the utility has failed to meet the applicable deadlines specified in § 1.1420, to perform make-ready.

(1) A utility shall make available and keep up-to-date a reasonably sufficient list of contractors it authorizes to perform survey and make-ready on the utility's facilities that an attacher may select from to complete pre-construction survey work prior to receiving utility approval and perform make-ready work on the utility's facilities where the utility has failed to meet the deadlines specified in § 1.1420. In the event that a utility does not provide such a list, attachers may use their own contractors for survey work.

(2) A utility shall make available and keep up-to-date a reasonably sufficient list of pre-approved contractors identified by existing attachers, pursuant to § 1.1422(c)(2), as authorized

to perform make-ready work on existing attachments in the communications space on its utility poles in cases where an existing attacher has failed to meet deadlines specified in § 1.14xx(a).

(3) *A utility shall make available to the contractor, on request, the data necessary to complete the pre-construction survey and to perform make-ready work, if necessary.*

(4) *A new attacher shall not perform any act requiring an outage of a utility's service or an existing attacher's service. The new attacher shall immediately notify the utility and the existing attacher if the new attacher has reason to believe that the utility's or an existing attacher's equipment or services may have been damaged or interrupted. Whenever work is to be performed on utility's network, the attacher shall also report work locations and coordinate communications with the utility's network operations center to assure that outages can be immediately associated with and communicated to the crew doing the work.*

(b) *A cable system operator or telecommunications carrier that hires a contractor for survey or make-ready work shall provide a utility with a reasonable opportunity for utility representatives to accompany and consult with the authorized contractor and the cable system operator or telecommunications carrier.*

(c) *If a pole owner fails to perform the survey and make-ready work for which an attacher has elected to pre-pay an application or other fee and an attacher retains a contractor to perform the survey or make-ready work, the pole owner shall refund all such pre-paid fees.*

(d) *If an existing attacher does not complete the proposed make-ready work within the required time, pursuant to § 1.142xx, new attachers may engage contractors pre-approved by the existing attacher to perform any necessary make-ready work on the attachments of affected existing attachers to accommodate the new attacher's attachment(s). The existing attacher shall be provided a reasonable opportunity to consult with the new attacher and the pre-approved contractor prior to the commencement of any make-ready work done on the existing attacher's network and facilities, as well as the opportunity to accompany the pre-approved contractor.*

(1) *Outages Prohibited. A new attacher shall not perform any act requiring an outage of an existing attacher's service. The new attacher shall immediately notify an existing attacher if the new attacher has reason to believe that the existing attacher's equipment or services may have been damaged or interrupted. Whenever work is to be performed on an existing attacher's network, the new attacher shall also report work locations and coordinate communications with an existing attacher's network operations center to assure that outages can be immediately associated with and communicated to the crew doing the work.*

(2) *Pre-Approval of Contractors. An existing attacher shall provide the utility with a list of contractors pre-approved to perform make-ready work on the attacher's facilities. Such list shall be provided either within (1) 30 days of notice from the utility that a new entity has requested a pole attachment agreement with the utility, or (2) seven (7) days from notice of approval of any new pole attachment application under section 1.1420(d). Before commencing any make-ready work, a pre-approved contractor shall commit in writing to*

comply with the technical and construction specifications that the existing attacher requires of its own contractors for work on its network.

(3) Post Make-Ready Inspection. *Within 15 days of completing the make-ready work, the new attacher shall inform the existing attacher, and if requested, the utility, that the make-ready work has been completed. The existing attacher and utility shall have 60 days from notice to inspect the work. If any deficiencies are found, the existing attacher may (a) perform any necessary correction and bill the new attacher for the costs of such correction, or (b) demand that the new attacher make the correction, at its expense, within 30 days.*

(4) Indemnity & Payment Assurance. *Any new attacher that undertakes to complete make-ready work on existing attachments shall indemnify existing attachers and the utility for any harms, claims, and liability that result from the make-ready work. Prior to requesting or performing any make-ready work, new attachers must post a \$1 million surety bond or other payment assurance to guarantee the timely and proper performance of, and compensation for, make-ready construction and continuous reliability of existing networks.*

(5) Documentation Required. *To reduce disputes and delays regarding indemnification and damages resulting from make-ready work, a new attacher or its pre-approved contractor shall document, via photograph or video, the condition of the existing attachers' facilities both before performing any make-ready work and after make-ready work is complete.*

1.1423. Obligations of joint utilities

If a pole is owned or controlled by more than one utility, all such utilities shall work together to generate efficiencies and eliminate duplicative costs. Specifically, each such utility shall:

(1) *Process pole attachment applications and perform pre-construction surveys concurrently with other utilities that own or control the pole.*

(2) *Use the same contractor for preconstruction surveys and, if possible, make-ready work.*

(3) *Allow a requesting entity to use an approved contractor to perform preconstruction surveys in the electric and communications space at the same time when preconstruction surveys have not been conducted by either utility within the deadlines specified in § 1.1420.*

NCTA ASAP Timeline Comparison

	Number of days (15-day blocks of time)										
	1-15	16-30	31-45	46-60	61-75	76-90	91-105	106-120	121-135	136-150	151+
Existing Timeline											
Existing MR	App./Survey (45 days)			Estimate (14 days)	Acceptance (14 days)	Utility MR – Comm. Space Attachments (60 days)			Extended Time (15 days)	Self-Help Available for Utility MR After 134-148 Days	
NCTA Proposed Timelines											
Utility MR	App./ Survey (15 days)	Estimate (7 days)	Paid (7 days)	Utility MR – Comm. Space Attachments (30 days)		Extended Time (15 days)		Self-Help Available for Utility MR After 74 Days			
Existing Attacher – Complex MR	App./ Survey (15 days)	Notice (7 days)	Existing Attacher Complex MR (45 days)			Self-Help Available for Complex Attacher MR After 67 Days					
Existing Attacher – Simple MR	App./ Survey (15 days)	Notice (7 days)	Existing Attacher Simple MR (30 days)		Self-Help Available for Simple Attacher MR After 52 Days						
BDAC Proposed Timelines											
Utility MR ¹	App./Survey (45 days) (unclear when simple vs. complex determination is made) (unclear when simple vs. complex determination is made)			Estimate (14 days)	Acceptance (14 days)	Utility MR – Comm. Space Attachments (60 days)			Self-Help Available for Utility MR After 119-133 Days		
Existing Attacher – Complex MR				Estimate (14 days)	Acceptance (14 days)	Existing Attacher MR (30 days)		Existing Attacher Extended MR (30 days)	Self-Help Available for Complex Attacher MR After 89-133 Days		
Existing Attacher – Simple MR				Estimate (14 days)	Acceptance (14 days)	Self-Help Available for Simple Attacher MR After Payment of MR Estimate 59-73 Days					
AT&T Proposed Timelines											
Utility MR	App./Survey (45 days)			Estimate (14 days)	Acceptance (14 days)	Utility MR – Comm. Space Attachments (60 days)			Extended Time (15 days)	Self-Help Available for Utility MR After 134-148 Days	
Existing Attacher – Complex MR	Application/ Survey/Estimate/Notice of Simple or Complex (45 days)			Acceptance (14 days)	Existing Attacher Complex MR (60 days)			Self-Help Available for Complex Attacher MR After 105-119 Days			
Existing Attacher – Simple MR	Application/ Survey/Estimate/Notice of Simple or Complex (45 days)			Self-Help Available for Simple Attacher MR After 45 Days							

¹ The BDAC Proposal’s treatment of utility make-ready is unclear, and at times internally inconsistent. For example, in one section of the proposal it suggests collaboration and coordination on a maximum shot-clock for wireless attachments above the communications space, but in another section of the same proposal it retains the current 90 day rule.

NCTA ASAP Timeline Comparison

<u>SUMMARY:</u>	
Existing Timeline:	134 to 148 days
<u>Proposed Utility Timelines:</u>	
<i>NCTA Proposed Utility Timeline</i>	74 days
<i>BDAC Proposed Utility Timeline</i>	119-133 days
<i>AT&T Proposed Utility Timeline</i>	134-148 days
<u>Proposed Existing Attacher Timelines (Complex MR):</u>	
<i>NCTA Proposed Existing Attacher Timeline</i>	67 days
<i>BDAC Proposed Existing Attacher Timeline (Complex MR)</i>	89-133 days
<i>AT&T Proposed Existing Attacher Timeline</i>	105-119 days
<u>Proposed Existing Attacher Timelines (Simple MR):</u>	
<i>NCTA Proposed Existing Attacher Timeline</i>	52 days
<i>BDAC Proposed Existing Attacher Timeline</i>	59-73 days
<i>AT&T Proposed Existing Attacher Timeline</i>	45 days